A **BRUNEI REPORT**

Emran bin Junaidi & Anor v Hj Abu Bakar bin Hj Munaf & Ors

B HIGH COURT (BRUNEI) — CIVIL SUIT NO 60 OF 1995
ROBERTS CJ
4 JANUARY 1996

Civil Procedure *— Judgments and orders — Order made by registrar in pre-trial conference — Whether order by registrar in the course of pre-trial conference may be*
C *subjected to any appeal under O 56 r 1(1) of the High Court Rules*

Civil Procedure *— Judgments and orders — Order that third party should attend court and give explanation — Whether registrar could summon witness to court — Whether registrar had power to make any order in a pre-trial conference against a third party*
D

The defendants appealed against an order ('the order') made by the chief registrar in the course of a pre-trial conference ('the PTC') where it was ordered that the manager of the defendants' insurance company should 'attend the court to explain why settlement was not
E reached in the event the parties herein are unable to reach a settlement or compromise in this action'. In deciding the appeal the court had to decide whether a PTC in a civil matter was only an administrative device and therefore any order by a registrar in the course of a PTC was only an administrative order and should not therefore be subject to any appeal under O 56 r 1(1) of the High Court Rules ('the
F HCR'). The defendants argued that the registrar had no power to make any order against the manager of the defendants' insurance company in such circumstances.

Held, allowing the appeal:

G (1) Any order, decision or direction by the registrar in the course of a PTC is made or reached in the course of proceedings which, even if the registrar is exercising administrative powers, arises in connection with judicial proceedings. It would therefore seem that any order made in a PTC should be regarded as an order giving rise to an appeal under O 56 r 1(1)of the HCR (see p
H 270G).

(2) The insurance company, which stood behind the defendants, was not itself a party to the cause in law, even though the reality may be that it was effectively the defendant in the action. Only after a judgment was obtained against a defendant, was the
I insurer obliged to satisfy the judgment against a defendant insured against third party risks. The insurance company was thus not a party to the action. A trial judge could not, in a civil matter, summon any witness, whether or not a party to the suit. He could not issue any order of the kind in this case addressed to the manager of the defendants' insurance company (see p 271H–I).

(3) It would not, therefore, be correct to say that the registrar should enjoy such powers, unless these were specifically conferred upon him by the HCR, or by other legislation. It would be wrong for him to attempt to give himself wider powers unless these were supported by legislative provision (p 272A).

Legislation referred to

High Court Rules [Brunei] O 25, O 38, O 56

Geoffrey Sim for the appellants/defendants.
Susanna Lim for the respondents/plaintiffs.

Cur Adv Vult

Roberts CJ: This is an appeal against an order made by the chief registrar on 23 November 1995, in the course of a pre-trial conference ('the PTC') held in his chambers.

The order against which the appeal is brought, was that the manager of the defendants' insurance company should have 'attended court to explain why a settlement was not reached in the event the parties herein are unable to reach a settlement or compromise in this action'.

Is there a right of appeal?

The appeal is of limited scope and does not include any other orders made by the chief registrar at the PTC held by him.

Order 56 r 1(1) of the High Court Rules ('HCR') allows an appeal to a judge in chambers in relation to any 'judgment, order or decision of the registrar'.

At present, though this may not be the case in future, a PTC in a civil matter is only an administrative device. It could be argued, with some force, that any order by a registrar in the course of a PTC is only an administrative order and should not therefore be subject to any appeal under O 56 r 1(1) of the HCR.

However, any order, decision or direction by the registrar in the course of a PTC is made or reached in the course of proceedings which, even if the registrar is exercising administrative powers, arise in connection with judicial proceedings.

It would therefore seem that any order made in a PTC should be regarded as an order giving rise to an appeal under O 56 r 1(1), unless at some future time an order, decision or direction of a registrar in a PTC is excluded from appeal under O 56.

The order made by the registrar was to the effect that the manager should attend 'the court'. I am sure, and this was not disputed by the parties, that the order was intended to secure his attendance before the registrar and that this was what was meant by reference to 'the court'.

A Neither party sought to argue that there had been no 'order' made by the registrar. Even if there had not been, there had clearly been a direction by the registrar, which amounted to an order, or a decision of the registrar to summon the manager, both of which would fall under O 56 r 1(1) .

B *Objects of the PTC*

There can be no doubt that a PTC in a civil matter has considerable advantages.

Experience has shown that many cases are settled at the last minute before trial, but that when the litigation process has begun, an early C settlement is made less likely by the unwillingness of either party to take the initiative, since this may be construed as a sign of weakness.

A PTC involves a positive interference by the court with the objects of:

(a) ensuring that the parties consider the possibility of settlement;

D (b) assisting the parties to narrow the areas of dispute;

(c) giving such directions as are necessary to prepare the parties for trial;

(d) assessing the time required by each party at the trial.

It is important that what transpires at a PTC should remain confidential E and not be disclosed to the trial judge.

Can the manager be ordered to appear?

While the defendants accept the desirability of a PTC, they argue that the registrar has no power to make any order against the manager of the F defendants' insurance company in such circumstances.

This, the defendants argue, is an effort to force the parties to reach a settlement, which the registrar ought not to do. He may properly encourage a settlement but should go no further. Nor should he express any opinion as to the merits of the claim or defence, since this is a matter for the court G of trial, after the hearing of the evidence.

There are various powers conferred upon the registrar during a summons for directions. These are, however, restricted to parties to an action (O 25 r 6(3)). They are thus limited in nature. In any event, the order complained of was made during a PTC and not during a summons for directions.

H Order 38 r 13 allows a court to order the production of documents at any stage, but that is not what is ordered in this instance.

The insurance company, which stands behind the defendants, is not itself a party to the cause in law, even though the reality may be that it is effectively the defendant in the action. Only after a judgment is obtained I against a defendant, is the insurer obliged to satisfy the judgment against a defendant insured against third party risks.

The insurance company was thus not a party to the action. The trial judge could not, in a civil matter, summon any witness, whether or not a

party to the suit. He could not issue any order of the kind specified to a manager of the defendants' insurance company. It would not, therefore, in my opinion, be correct to say that the registrar should enjoy such powers, unless these were specifically conferred upon him by the HCR, or by other legislation. It would be wrong for him to attempt to give himself wider powers unless these were supported by legislative provision.

PTC provisions

There can be no dispute that a PTC, properly employed, can be of great value in narrowing the issues and saving the time and expense of litigation.

At present, however, there appears to be some inconsistency between the practice followed by registrars at PTC's. Some prefer to remain flexible and to give such directions as they think are desirable in each case before them; others would rather follow guidelines, so that the parties in the suit may realize what the registrar is likely to require.

I consider that it is desirable that appropriate practice directions should be issued, in due course, setting out how a PTC should be conducted. This will ensure a degree of uniformity among registrars and will indicate to the parties what is likely to be required of them at a PTC.

Conclusion

Although I fully appreciate, and indeed applaud, the efforts of the registrar to obtain a settlement of this suit, I am of the opinion that he should not have issued any order to a person who was neither a party to the action and would not have been a witness in it, without the agreement of the parties.

I thus allow the appeal by the defendants and award the costs of the appeal to them, such costs to be taxed if not agreed upon.

Appeal allowed.

Reported by Kenneth Goh